IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 8976 of 2005

Between:

Jasbir Singh, S/o. Late Harbhajan Singh,
D.No. 3-6-291, Sadana Buildings,

Hyderguda, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad,
Tankbund, Hyderabad.
2 The Assistant City Planner, Town Planning Section,

Circle No. III, Municipal Corporation of Hyderabad,

Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned notice dt. 15-4-2005 issued by the respondents in Lr.No. 3/TPS/C3/MCH/2004 proposing to demolish the structure in cellar portion of the building bearing D.No. 3-6-291, Sadana buildings at Hyderguda, Hyderabad as illegal, unjust, and contrary to the provisions of law besides being violative of principles of natural justice and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.S.A.RAZAK

Counsel for the Respondent Nos.1 and 2: MR.RAMA RAO GHANTA

The Court at the stage of admission made the following:

ORDER:

The writ petition is filed against the impugned notice dated 15.04.2005, issued by the respondents in Lr.No.3/TPS/C3/MCH/2004, in which it is stated that the respondents noticed that the petitioner made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the roads creating lot of traffic congestion accidents and public nuisance, and as per directions of this Court dated 28.02.1996 issued in Contempt Case No.101 of 1996 and as per G.O.Ms.No.419 M.A.,dated 31.07.1998, the petitioner was directed to demolish the unauthorized structures.

The petitioner contended that before demolition of structures, no prior notice was issued and the action taken by the respondents is illegal.

On the other hand, the learned standing counsel appearing for the respondents contended that as per the sanctioned plan, the cellar should be used for parking only, however, the petitioner unauthorisedly converted the cellar into shops and let out the same to the third parties. He further contended that the collection of property tax will not confer any authorization to unauthorized construction and as per Section 220 (3) of H.M.C.Act, the respondents are entitled to assess the unauthorized constructions until they were demolished. He further contended that the petitioner has not complied with the impugned notice and hence the respondents demolished some of unauthorized structures.

It is settled principle that the cellar is meant for parking only but not for raising

structures or shops for purpose of business. If any unauthorized constructions made in the cellar portion, they cannot be regularized as per G.O.Ms.No.419 M.A., dated 31.07.1998. Admittedly, the petitioner has not given any explanation to the impugned notice.

Having regard to the facts and circumstances of the case, I deem it appropriate to give a direction to the petitioner to submit his explanation to the impugned notice dated 15.04.2005 within 15 days from the date of receipt of a copy of this order and on filing such explanation, it is for the respondents to pass appropriate orders thereon in accordance with law.

With the above observations, the Writ Petition is disposed of. No order as to costs.

Dated: 16.06.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner,

Municipal Corporation of Hyderabad,

Tankbund, Hyderabad

2. The Assistant City Planer,

Town Planning Section, Circle No.III,

Municipal Corporation of Hyderabad,

Abids, Hyderabad

3. Two CD copies